

II. Claim 91, drawn to a cosmetic or dermatological method for treating
keratinous substances.

Office Action at 2.

The restriction requirement, as set forth above and in the Office Action at pages 2-3, is respectfully traversed. However, to be fully responsive to the restriction requirement, **Applicant provisionally elects, with traverse, the subject matter of Group I, claims 1-90.**

Applicant respectfully traverses the restriction requirement on the basis that the Examiner has failed to show that a serious burden exists to examine groups I and II together. Applicant refers the Examiner to M.P.E.P. § 803, which sets forth the criteria and guidelines for Examiners to follow in making proper requirements for restriction.

The M.P.E.P. instructs Examiners as follows:

If the search and examination of an entire application can be made without **serious burden**, the Office **must** examine it on the merits, even though it includes claims to distinct or independent inventions.

M.P.E.P. § 803 (emphasis added).

Here, the Examiner has not shown that examining Groups I and II together would constitute a serious burden. Rather, the Examiner admits that groups I and II are related as product and process of use. The Examiner contends that the above related groups can also be distinct, but does not specify what serious burden will be placed on the Examiner if she were to proceed in examining the groups together, as required by

M.P.E.P. § 803. Applicants note that the independent claims in both groups (claims 1 and 91) each pertain to a cosmetic or dermatological composition comprising at least one gradient copolymer comprising at least two different monomeric residues, wherein the at least one gradient copolymer exhibits a mass polydispersity index (I_p) less than or equal to 2.5. Accordingly, a search for the subject matter recited in the claims of Group I should substantially, if not completely, overlap a search for the subject matter recited in the claim of Group II. Thus, for at least these reasons, Applicant respectfully submits that the restriction requirement is in error and requests that the requirement be withdrawn.

Election of Species Requirement

If Group I is elected, the Examiner further requires the election of a single “specifically named or completely defined” species for each of the following:

- (a) one hydrophilic monomeric residue;
- (b) one compound chosen from C_1 - C_4 N,N-dialkyl(meth)acrylamides and C_1 - C_4 N,N-dialkyl C_1 - C_6 aminoalkyl(meth)acrylamides;
- (c) a monomer capable of forming a homopolymer elected from claims 57, 63, 66, and 70; and
- (d) at least one additional constituent chosen from water, hydrophilic and lipophilic organic solvents, waxes of animal, vegetable, mineral and synthetic origin.

Office Action at 4.

The Examiner contends that since the species "are independent or distinct because the species are all directed to a cosmetic or dermatological composition," election of a single disclosed species is required along with a listing of all claims readable thereon. *Id.* at 4.

The election requirement, as set forth above and in the Office Action at pages 3-5, is respectfully traversed. However, to be fully responsive to the election requirement, Applicant provisionally elects, with traverse:

- (a) **methacrylic acid** as the hydrophilic monomeric residue;
- (b) **N,N-dimethylaminopropylmethacrylamide** as the hydrophilic monomeric residue chosen from C₁-C₄ N,N-dialkyl(meth)acrylamides and C₁-C₄ N,N-dialkyl-C₁-C₆.aminoalkyl(meth)acrylamides;
- (c) **n-butyl acrylate** as the monomer capable of forming a homopolymer with a T_g less than or equal to 20°C elected from claims 57, 63, 66, and 70; and
- (d) **water** as the additional constituent.

Applicant further submits that claims 18-22, 31, 37, 54, and 55 read on elected species (a), claims 18-22, 31, 32, 34, and 54 read on elected species (b), claims 57 and 63 read on elected species (c), and claims 77 and 79-82 read on elected species (d).

Applicant respectfully traverses the election of species requirement on the basis that the Examiner has failed to show that a serious burden exists to examine all of the alleged species. M.P.E.P. § 803.02 lays out clear requirements for justifying an election of species. An examiner must show that the search and examination of a claim would impose a **serious burden** on the Examiner because it embraces an unreasonable

number of species. *Id.* (emphasis added). The Examiner has not provided any evidence of such a burden.

If the Examiner, however, chooses to maintain the election of species requirement, Applicant expects the Examiner, if the elected species are found allowable, to continue to examine the full scope of the subject matter to the extent necessary to determine the patentability thereof, as is the duty according to 35 U.S.C. § 121 and M.P.E.P. § 803.2.

Thus, in view of the foregoing remarks, Applicant respectfully requests reconsideration and withdrawal of the restriction and election requirements.

If there is any fee due in connection with the filing of this paper, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: August 27, 2007

By: 

Thalia V. Warnement
Reg. No. 39,064